THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.7925 OF 2002

DATED: 20-08-2007

BETWEEN

M.A. Muneem @ Haji Seth
and another.

...PETITIONERS

AND

The Investigation Officer
(Inspector of Police),
Incharge of Investigation of
Cr.No.8/2002, C.I.D.,
O/o. Addl. Director General of
Police, C.I.D., Hyderabad and
another.

...RESPONDENTS

ORDER:

Petitioners seek a Writ of Mandamus to declare the proceedings in Cr.No.8 of 2002 so far as they relate to them as illegal and unconstitutional and quash the same.

2. Cr.No.8 of 2002 had been registered on 04.04.2002 by P.S. C.I.D for the offence under Sections 120-B, 420, 468 and 477 of the Indian Penal Code, 1860 against nine accused and the petitioners are A8 and A9 in the said crime. On written information furnished by the Managing Director of Charminar Cooperative Urban Bank Limited – second respondent, the said crime has been registered by the first respondent. It is alleged in the complaint that to the four firms namely, Saibaba Enterprises, Royal Enterprises, Golden Enterprises and Mumtaz & Company, the second

respondent bank sanctioned loan and certain amounts were due and payable as on the date of the complaint. The first petitioner, M.A. Muneem @ Haji Seth, proprietor of Mumtaz & Company in collusion with the partners of the firms borrowed loan amounts and he mortgaged title deeds of Shalimar Garden property owned by him to secure all the loans and as on 31.12.2001 the outstanding amounts due were 99.40 lakhs, 33.33 lakhs, 44.87 lakhs and 73.02 lakhs respectively. On 18.12.2001, Syed Alamdar Hussain @ Sajjad Aga, the Chairman of Charminar Cooperative Urban Bank, who is A2 in the said crime, telephoned one Mr. Suribabu, Deputy General Manager – A3 and instructed him to issue no due certificates on the above four firms. On which he instructed one Smt. G. Sakeena, Manager Recovery – A4, who refused to issue the same as more than 3 crores of rupees is outstanding on the above four firms. Suribabu informed the same to the Chairman, who instructed A4 on telephone to issued no due certificates assuring that if any thing goes wrong he would take care and on that assurance A4 issued four no due certificates. One Mr. Abdul Shameem, son of the petitioner visited the recovery branch of the bank, Mehditpatnam and collected the certificates on 18.12.2001.

It is stated that the no due certificates were managed to be obtained without following the formalities and fulfilling the bank procedures, without closing the account of the said four firms, without return of the original mortgaged documents and without having any correspondence in that regard. Thus, it is stated that there was no guideline issued by RBI for one time settlement and in due course the first petitioner paid Rs.1 crore against the four accounts towards the OTS. Thus, it is the case of the second respondent that the four no due certificates were issued due to undue pressure exerted by late Sajjad Aga, the Chairman of the bank, Sri Srinivas Reddy, Clerk-cum-Cashier and Suribabu also corroborated the circumstances leading to issue of the certificates. Thus, it is inferred that the four partners of the aforesaid firms in collusion with Haji Seth – first

petitioner/A1 and the late Sajjad Aga, acted dishonestly. Accordingly, the second respondent requested to take necessary action. Pursuant to the said complaint, FIR has been registered.

3. Learned counsel for the petitioners submits that the allegations made in the FIR does not disclose and do not attract any offence, therefore, further investigation in the case is nothing but an abuse of process of law. The petitioners are the loanees and they have discharged the loan amounts. He further submits that the allegations made against the deceased Chairman of the bank cannot be established and there is no scope to obtain no due certificates without clearing the loan amount, therefore, it cannot be said that the petitioners also contributed for the commission of the offence. Learned counsel for the petitioners relied on two judgments of the Supreme Court in

STATE OF HARYANA v. BHAJAN LAL[1] and

M/s. PEPSI FOODS LIMITED v. SPECIAL JUDICIAL MAGISTRATE[2]**.**

4. Counter has been filed by the first respondent stating that on a complaint made by the second respondent the aforesaid crime has been registered and the investigation has been entrusted to him. Petitioners are brothers and they are partners of Mumtaz & Company and they have taken loan of Rs.95 Lakhs from the Charminar Cooperative Urban Bank. The petitioners did not clear the entire loan amount and without repaying the loan amount they in collusion with late Syed Alamdar Hussain @ Sajjad Aga, the then Chairman of Charminar Bank, along with other accused obtained no due certificates on 18.12.2002. As per the complaint they have taken four loans to a tune of Rs.3.76 crores, including three loans on the names of the fictitious firms namely, Saibaba Enterprises, Royal Enterprises and Golden Enterprises and the petitioners and their children were the owners of the property bearing MCH No.5-8-323/1-5, Shalimar Gardens, Hyderabad admeasuring 3942 sq, yards with built up area and the Sub-Registrar value of the said property in 1998 was Rs.7.09,56,000/-. It is stated that they have

mortgaged the said property as security for all the four loans including the three fictitious firms. The contention that the bank advanced the loans without their request is denied. The further contention that the said three borrowers have negotiated with the bank and paid the entire loan amount and obtained no due certificates on 18.12.2002 is also denied. The said three borrowers of the bank are due an amount of Rs.1,70,47,638/- as on 18.12.2001, therefore, it cannot be said that the loan was paid by the aforesaid three firms. When the loan was not at all discharged, the question of obtaining no due certificates does not arise. It is stated that no due certificates were obtained in collusion with the then Chairman of the Charminar Bank and other accused. The loan in respect of the four firms is not at all cleared and the no due certificates in respect of the four loans of huge amounts, including the petitioners and in the name of fictitious firms, were fraudulently obtained in a planned manner by conspiring with the late Chairman of the bank and other bank officials with an intention to cheat the general public i.e. the depositors of the bank and to enrich themselves illegally. Therefore, it cannot be said that the matter is civil in nature and that there is no criminal liability.

5. It is stated that subsequent to the filing of the writ petition the loan amount in respect of two firms have been cleared. I am of the opinion that clearance of the loan amount subsequently will not absolve the criminal liability of the petitioners in respect of the offence committed as on the date of obtaining no due certificates.

The contention of the learned counsel for the petitioners that as per the judgment of Supreme Court in **BHAJAN LAL's** (1 supra) the FIR is liable is to be quashed, cannot be accepted for the reason that the FIR can be quashed only under the following circumstances; even if accepted on the face value in their entirety do not prima facie constitute any offence; if the allegations do not disclose a cognizable offence; the uncontroverted allegations made in the FIR and the evidence collected do not disclose any commission of offence; if the allegations in the FIR discloses a non-

cognizable offence, which cannot be investigated without an order of a Magistrate under Section 155(2) Cr.P.C; if the allegations are absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion; if there is an express legal bar under the Code to the institution of criminal proceedings and if the criminal proceedings is manifestly attended with mala fides and the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private or personal grudge. Even as per the judgment the FIRs have to be quashed in the rarest of the rare cases. In the instant case, admittedly the case registered against the petitioner is a cognizable offence, therefore, it cannot be said that the law prohibits for registration of the case and there is a bar for proceeding against the accused. Therefore, none of the principles laid down in the aforesaid judgment apply to the instant case, as the perusal of the FIR, prima facie, goes to show that the provisions of Sections mentioned in the FIR do attract.

6. However, in the case of **STATE OF ORISSA v. SAROJ KUMAR SAHOO**[3] the Supreme Court held that where the investigation is not completed it is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 Cr.P.C it is not permissible for the court to act as if it was a trial court.

Even when charge is framed at that stage, the Court has to only prima facie be satisfied about the existence of sufficient ground to proceed against the accused. The Court can evaluate the material and documents on record for limited purpose, but it cannot appreciate the evidence. The Court is not required to appreciate evidence to conclude whether the material produced are sufficient or not for convicting the accused. When the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 Cr.P.C,

which cannot be termed as evidence without being tested and proved.

7. It is not the case of the petitioners that they do not require the no due certificates at al and that no due certificates were obtained illegally in their names. The petitioners throw the entire blame on the deceased bank Chairman. If the petitioners did not require the no due certificates, the question of process of no due certificates and collection of the same by the son of the first petitioner would not arise. Therefore, it cannot be said that there is no role on the part of the petitioners in collecting no due certificates without clearing dues in respect of the four firms. Therefore, I am of the opinion that it cannot be said that the petitioners are not at all involved in the offence registered against them along with other accused, as the petitioners themselves are the main beneficiaries, for whose sake the entire process has taken place for issuance of no due certificates without clearing the dues payable to the bank.

For the aforesaid reasons, I do not see any merits in the writ petition and it is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

August 20, 2007
DSK

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[1] AIR 1992 SC 604

[2] AIR 1998 SC 128

[3] (2006) 2 SCC (Cri) 272